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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,397	01/02/2001	Lori Ann Wilson	67,500-353	7520

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,397

Applicant(s)

WILSON ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-12, 34 and 35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 8-12, 34, 35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 34-35 are vague and indefinite because they depend from claims that have been withdrawn; thus, it is not clear what is intended.

Claims 1-3, 8-12, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alderman in view of Nakamura et al (Production of waxy (amylose free) wheats) and the book " Wheat Chemistry and Technology).

Alderman discloses cooked- puffed waxy cereal food. The grains used are waxy varieties of the cereal grains such as corn, rice, sorghum, barley, millet etc... The whole grain may be processed in the form of whole kernels or fractions thereof such as grits. The grains are cooked and then oven puffed. The grains are formed into ready-to-eat cereal foods of the breakfast cereal type. The grains can be pearled. (See entire reference)

Alderman does not disclose the grain is waxy wheat and coating the grains with an edible coating.

Nakamura et al disclose the production of waxy wheats. (See abstract)

The book shows that the common wheat " Triticum aestivum" include both soft and hard wheat and the protein content of the soft and hard wheat ranges from 9-15%.

It would have been obvious to one skilled in the art at the time of the invention to use any waxy grains that are available. Nakamura et al show that waxy wheats are known. Thus, it would have been obvious to use waxy wheat to produce the waxy

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cooked cereal grains disclosed by Alderman. When waxy wheat is used, it is obvious the grains will have the allele and the amylose content claimed. Nakamura et al do not disclose the protein content of the wheat; however, they disclose common wheat is used. Common wheat includes both the soft and hard kind; as shown by the textbook, the protein ranges from 9-15%. Thus, the protein claimed is commonly found in wheat and would be expected to find in the wheat product of Nakamura et al because the making of the waxy variety does not alter the protein content. Furthermore, the specification does not disclose any step to alter the protein content of the wheat product; thus, the protein content is that commonly found in wheat product. It would have been obvious to put an edible coating such as sucrose, corn syrup solid on the grains to enhance the taste and flavor of the grains. This is well known in the cereal technology. Since the cereal product is puffed and it is a ready to eat cereal, the product is buoyant because cereal floats in liquid. The Alderman product is dried; it is made of cereal grain and it is the same type of product as claimed. Thus, it is obvious the product has the same storage stability as claimed. Alderman does not disclose adding additive to inhibit development of rancidity.

In the response filed 3/23/05, applicant argues the products disclosed in Alderman are not whole grain, are not gelatinized throughout and are not storage stable in absence of additive; applicant submits 132 declaration to show that these properties are not found in the Alderman products. The declaration is not found to be persuasive. As shown on page 2 of the declaration, the waxy wheat, as cooked by the Alderman process, is cooked for 1 hour and 40 minutes at a pressure of 15psi. The waxy wheat,

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as cooked by the process disclosed in the instant specification, is cooked for a total time of 1 hours at a pressure of 15 psi. Page 3 of the declaration states that the water solubility, alkali solubility and viscosity of the Alderman product are different from the claimed product; thus, this indicate that the Alderman product is less gelatinized than the claimed product. This showing is not persuasive. The declaration does not show that this difference in measurement is indicative that the grain is not gelatinized throughout. The claim does recite a degree of gelatinization. The grain cooked by the Alderman process is cooked for a longer period of time at the same pressure; thus, by logical reasoning, the grain is more cooked than the claimed grain. Thus, how can something that is cooked for a longer period of time be less gelatinized than the same grain that is cooked for a shorter period of time. The declaration does not show that a water solubility of 18 means that the grain is not totally cooked. Also, the declaration does not show the conditions of measurement of the two products; thus, it is not known how the parameters are measured for the two products. There is no showing of how the testing is done. Also, the declaration only show 1 example of each. Such small number of testing is not sufficient to make a general conclusion because errors in measurement can lead to different result and there is no data to reach the conclusion that the numbers will be the same in repeated trials.

Page 3 of the declaration states the grains have different amounts of fiber; thus, this indicates that the Alderman grain is not whole grain. Alderman teaches using whole grain (see col. 2 line 55). The declaration shows whole grain. It is not known how the fiber level is measured for the two products. Furthermore, the level of fiber is not

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claimed; thus, it is an issue to be considered. The claim recites whole grain and Alderman discloses whole grain. The declaration states the fiber is found in the outer layer of the grain and its level goes down as a grain is converted from whole grain to processed grain. The grain as cooked by the process disclosed in the specification goes through more processing steps than the grain cooked in accordance with the Alderman process. Alderman does not teach removing the outer bran layer.

Page 4 of the declaration shows that the Alderman product has different headspace hexanal from the claimed product; thus, the product does not have the storage stability claimed. The testing has the same problem as the testing done for the determination of gelatinization. The number of sample run is too small to enable one to reach a conclusion that the same end result will be obtained in subsequent trials. As cited on page 2 of the declaration, the steaming process serves to inactivate the lipases which are believed to make cooked whole grain waxy wheat unstable and subject to rancidity. The grains are steamed for a longer period of time in the Alderman process. Thus, the lipases are inactivated and this cooking gives the product storage stability. The declaration does not offer any explanation for this discrepancy.

Applicant's arguments filed 3/23/05 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 12, 2005


LIEN TRAN
PRIMARY EXAMINER
